

JUL 26 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDUARDO SOTO-VALLE,

Petitioner,

v.

JOHN ASHCROFT, U.S. ATTORNEY
GENERAL,

Respondent.

No. 03-72747

INS No. A44-099-125

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted October 21, 2005
Pasadena, California

Before: PREGERSON, CLIFTON, Circuit Judges, and HICKS, District Judge.**

Petitioner Eduardo Soto-Valle (“Soto-Valle”) seeks review of a decision by the Board of Immigration Appeals (“BIA”) denying his application for Cancellation of Removal pursuant to section 240A(a) of the Immigration and

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit rule 36-3.

** The Honorable Larry R. Hicks, District Court Judge for the District of Nevada, sitting by designation.

Nationality Act (“INA”), 8 U.S.C. § 1229b(a). Soto-Valle argues that his mother’s residence should be imputed to him in order to make him eligible for cancellation of removal pursuant to *Lepe-Guitron v. Immigration & Naturalization Service*, 16 F.3d 1021 (9th Cir. 1994).

The issue whether a parent’s lawful residence should be imputed to his or her minor child to satisfy the section 240A(a)(2)’s residency requirement was recently settled in *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013 (9th Cir. 2005). In that case, the court concluded that “a parent’s admission for permanent resident status is imputed to the parent’s unemancipated minor children residing with the parent” for the purpose of satisfying the requirements of section 240A(a)(2). *Id.* at 1029. This determination has settled the issue in the Ninth Circuit.

Accordingly, we conclude the BIA erred in determining Soto-Valle was not eligible for cancellation of removal because he had not satisfied the requirements of section 240A(a)(2). The legal status of Soto-Valle’s mother may be imputed to him in determining whether he has resided in the United States continuously for seven years. The matter is remanded to the BIA for further proceedings consistent with this disposition.

PETITION GRANTED; REMANDED.